

# The new Company Law in a nutshell

There has been a shake up in the corporate world as the Companies Act has been changed drastically and the new changes will be implemented in third quarter of the calendar year. It has been received with mixed feelings as there are provisions making the directors liable for losses and measures to give distressed companies more time to recover. The new Act allows a two year transitional phase for existing companies to adjust; this period only applies to certain issues as reported in the financial Fin24 earlier this year. The existing companies have been mandated to take immediate action so as to comply with the new Act's requirements and should not be complacent.

The Ministry of Trade and Industry ushered these new changes with the sole purpose of reducing costs and the red tape when doing commerce in the republic. The most important implications of the new act are as follows:

- Directors may become liable for the losses suffered by the company as a result of that director having taken, or failed to act against, certain unauthorized or unlawful actions and situations
- One of the innovations of the law is the business rescue scheme. Instead of a company in financial distress going under judicial management, a rescue process can be initiated by the management and workers of the company. This solely entails that creditors are held at bay whilst the company is put back on its feet.
- Registering a new company will become far easier because only a single registration document will be mandatory.
- Companies will also be able to trade with a company number and no name.
- Small and medium size companies will not be required to

- produce audited financial statements.
- The concept of a 'closed corporation' will be ditched, but the existing CC's will continue to trade as before.
- No new CC's will be registered.
- Minority of shareholders will be able to call a general meeting marshalling only 10% of the total shares in issue. This is solely aimed at promoting shareholder activism.
- An audit committee can be appointed by shareholders of a company with the aim of entrenching the role of shareholders and the level of independence that should be maintained between audit committees and boards of companies.

The Werksman Attorneys' commercial department produced a checklist and an accompanying implementation guide to assist the smooth implementation which is as follows:

1. Adopt a new Memorandum of Incorporation
2. Consider the role of existing shareholders' agreements
3. Change name to reflect new rules on name ending
4. Identify prescribed officers
5. Check that all directors, prescribed officers, committee members, company secretaries and auditors are eligible and not disqualified
6. Educate directors, prescribed officers and other relevant staff to their responsibilities
7. Consider whether adequate indemnity or insurance has been provided for directors and public officers
8. Establish audit committee and social ethics committee with correct membership, if need be so
9. Determine the extent of the company's responsibility to have its financial statements audited and appoint an auditor where

- necessary
- 10. Ensure that all notices to shareholders and documents are in the prescribed form and plain language
- 11. Endorse share certificates where the transfer of shares is restricted
- 12. Optional conversion on par value shares to shares having no par value
- 13. Companies limited by guarantee must elect to become profit company and make the necessary consequential changes or become a non-profit company.

14. Comply with the new Act, especially provisions dealing with:
    - The duties, conduct and liabilities of directors
    - Rights of shareholders to receive notices and have access to information
    - Meetings of shareholders and directors, and the adoption of resolutions
    - Approvals required for any distributions, financial assistance including intra-group loans, insider share issues and options
    - Fundamental transactions, take-overs and offers
- Listed companies should comply with the amended JSE Listings Requirements.

There has been an incessant barrage of concerns from practitioners who deal with the company law but the Ministry has however held that the new perspective was to the benefit of the companies operating in South Africa.

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# The Publisher's Ink



## CORPORATE GOVERNANCE

To be compliant it is necessary. Even for Small Commercial Media.

From the 15th to the 18th May 2012 all MDDA Sponsored projects were gathered in Durban at the Coastlands Hotel and Conference Centre to look at, among other issues, the issue of Corporate Governance Compliance in a 3 day learning forum organised and sponsored by the MDDA. Next week Khanyisa will bring you the whole shoot as to what transpired as well as which media companies walked away with awards that were co-hosted by the MDDA and Sanlam, an event that marked the end of the Learning Forum on Friday evening.

Talking Corporate Governance, there are four categories that we are looking at:

Community Print Media

Small Commercial Print Media

Community Broadcast (Radio)

Community Broadcast (TV)

Fortunately for community media, it has always been the requirement of ICASA for them to comply in terms of Corporate Governance. One major requirement is to have a Board that is not part of the business so as to induce transparency and financial discipline.

This matter is a sail through in the community media fraternity while even at this very MDDA Learning Forum, with the small commercial media, the matter was a bone of contention.

The question was why can the Shareholders of the company not form the required Board to oversee operations more so as they have a vested financial interest in the business? Why should people who do not have any interest in the business be called in to form an advisory board to a profit making entity?

What if, after being exposed to the secrets of the company they

take the idea and start something else similar there by posing as unwarranted competition? These were all the questions that flew around during the breakaway sessions.

After a thorough discussion on the topic, it came out that since these small commercial media companies have access to public funding; they have to comply, as this puts an element of trust, not only to MDDA but with any other funding organisation that the company may approach.

The issue that the members of this advisory board, 5 to 7, can be appointed by the board of directors and shareholders, put the matter to rest because this advisory board, unlike in community media where they have to come from the community, they do not have to come from the community.

They can come from any corner of the globe, especially with the advent of technology, Skype and video Conferencing, and could possess various expertise from law, finance and media itself!

They then become an asset to the business to network the company, bring forth realistic advice and guidance and even major business into the company growing it to a giant.

The issue of the idea being stolen was put to rest as these are not hungry people but well to do in their own right and have no interest in sabotaging a small company but would rather grow it.

Watch next week's issue for a full download. Till then, Adios!

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